

No. 3,498,798). Applicants respectfully note that although the Examiner makes an assertion of clear anticipation under each of the above patents, the Examiner provides no explanation as to why such anticipation exists. Although lacking proper direction from the Examiner, Applicants will respond to the merits of each of these references under the criteria for a proper rejection under 35 U.S.C. § 102(b).

According to MPEP § 2131 a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim. The elements must be arranged as required by the claim.

Applicants do not agree that Johnson '588 provides a proper anticipatory reference under 35 U.S.C. § 102(b). First, Johnson '588 teaches a mere "liner".¹ According to Johnson '588, the package liner is placed within a package, and is not itself the package.² Also, this liner is made from an elongated sheet of flexible packaging material.³

As noted in Claim 1 of Applicants' specification, Applicants provide a shaped container bottom. The container bottom is an integral part of the container and is not an insert therein. Also, the container bottom, as well as the rest of the container, are formed from a thermoplastic material.⁴ Suitable thermoplastic materials include, but are not limited to, polyolefins, such as polyethylene (PE), polypropylene (PP), polystyrene, and the like.⁵ Lastly, Applicants' Claim 1 specifically recites that the container bottom itself has a concave curvature about the bottom panel of the container.⁶

Applicants therefore respectfully assert that Johnson '588 fails to disclose Applicants' shaped container bottom wherein the container bottom is itself an integral part of the container. Furthermore, Johnson's '588 liner, since it is an insert and not itself part of the container, does not teach Applicants' container bottom having a concave curvature.

Applicants therefore request reconsideration and allowance of Claims 1-20 over the Examiner's 35 U.S.C. § 102(b) rejection as applied to Johnson '588.

¹ Johnson (U.S. Patent No. 4,164,588: col. 1, lines 1-2; Title: **Package Liner and Fragile Snack Chip Combination**).

² Id. at col. 4, lines 51-54.

³ Id. at col. 1, lines 26-29.

⁴ Applicants' Specification at page 8, lines 12-14.

⁵ Id. at page 8, lines 14-15.

⁶ Id. at page 11, lines 3-4.

Johnson
Nothing precludes
the shaped cont. bottom
from being a liner or
from being made from
an elongated sheet
of flex. pack.
matt.

Where claims
plastic material

The shaped cont.
bottom comprising
a bottom panel
having
The liner is the
entire package
and is integrally
formed in one
piece

Griffith '347
clear shows concave curvature
on both upper & lower surfaces of
bottom cushioning device

Griffith '347 does not disclose Applicants' invention. In Claim 1, Applicants claim a shaped container bottom having a concave curvature to the container bottom.⁷ This concave curvature is definitively shown in Applicants' Figure 9 in which the container bottom curves upwardly into the container. In stark contrast to Applicants' invention, Griffith '347 provides a container bottom that curves downwardly away from the container thereby forming a convex curvature in their container bottom. This convex curvature of Griffith's is readily seen in Figures 1, 2, 3, and 3A of Griffith '347.

Given these apparent differences, Applicants respectfully request reconsideration and allowance of Claims 1-20 over the Examiner's 35 U.S.C. § 102(b) rejection as applied to Griffith '347.

and closure 12
would have same
rim structure as
closure 13 and
in Fig. 4 ~~only~~ except
inverted. This end
closure forms a
shaped container
bottom w/ concave
curvature associated
w/ its upper and lower
surfaces at ~~lower~~ radius
beads.

Baur '798 does not teach or provide a shaped container bottom. Baur '798 neither teaches in their specification nor discloses in their figures a shaped container bottom like Applicants'. Net, this key element is completely missing from Baur '798.

Therefore, Baur '798 should be removed as an anticipatory reference against Applicants' claims and Claims 1-20 should be allowed over the Examiner's 35 U.S.C. § 102(b) rejection as applied to Baur '798.

Claims 1-7 and 10-20 stand rejected under 35 U.S.C. § 102(e) as being *clearly* anticipated by Sagan, et al. (U.S. Patent No. 6,042,856). [Emphasis added].

Applicants respectfully point out, that as in the Examiner's previous office action, the Examiner has not provided a proper rejection to Claims 1-7 and 10-20 under 35 U.S.C. § 102(e). First, the Examiner has pointed to nothing within Sagan '856 that would warrant a 35 U.S.C. § 102(e) rejection. Furthermore, although the Examiner states only that Sagan '856 is clearly anticipatory, the Examiner does not clearly point out that which is the basis of anticipation within Sagan '856.

37 C.F.R. § 1.104(c)(2) points out that the pertinence of a reference, if not apparent, must be clearly explained and each rejected claim specified. The Examiner has failed to clearly explain why Sagan '856 is so clearly anticipatory. Applicants respectfully assert that Sagan '856 does not apparently show anticipation under 35 U.S.C. § 102(e) especially when one considers that Sagan '856 provides a mere tray for holding shrimp in a circular array rather than in a stacked formation, each on top of another as in Applicants' stacked snack chips.

vertical
A stack of
snack chips is
never claimed

⁷ Id. at page 11, lines 1-6.

Although the Examiner has not properly explained the relevance of Sagan '856 to Applicants' claims, Applicants will respond to the relevance of Sagan '856 to Applicants' Claims 1-7 and 10-20.

Herein, Sagan's container is missing several elements of Applicants' shaped container bottom. First, Sagan '865 does not provide a container whose concave-curvature bottom panel substantially conforms to the curvature of a snack piece. Sagan '865 presents shrimp, not snack chips. Further, Sagan '865 does not stack their shrimp like Applicants' snack chips. Rather, Sagan '865 presents shrimp in a circular array.⁸ Applicants therefore respectfully disagree with the Examiner's contentions that Sagan '865 discloses the invention except for the same center radius dimensions.

Without these elements and others, Sagan '856 cannot be properly said to provide a basis for a 35 U.S.C. § 102(b) rejection. Applicants therefore respectfully request reconsideration and allowance of Claims 1-7 and 10-20 over the Examiner's 35 U.S.C. § 102(e) rejection.

Claims 1-4 stand rejected under 35 U.S.C. § 102(b) as being *clearly* anticipated by Ruiz (U.S. Patent No. 4,873,099). [Emphasis added].

Unfortunately, As in the previous office action, the Examiner again has failed to properly clarify what it is in the reference, namely Ruiz '099, that is the source of anticipation as defined by 35 U.S.C. § 102(b). More specifically, the Examiner has failed to properly describe what in Ruiz '099 serves as the basis for his 35 U.S.C. § 102(b) rejection as is required by 37 C.F.R. § 1.104(c)(2).

Although the Examiner has not properly explained the relevance of Ruiz '099 to Applicants' claims, Applicants will respond to the relevance of Ruiz '099 to Applicants' Claims 1-4.

Applicants' invention comprises a shaped container bottom formed thusly to receive a plurality of curved snack pieces. The bottom panel of the container has a concave-curvature that substantially conforms to the curvature of the snack pieces. Furthermore, at least a portion of the peripheral edge of the lowest snack piece rests upon the bottom panel.

Ruiz '099 does not provide a curved container bottom. Ruiz's container bottom is completely planar and non-curved in any respect which is evident in his Figs. 5 and 6. Also, no part of the peripheral edge of the lowest edible product in Ruiz '099 touches or makes contact with the bottom panel of Ruiz's container.

Shrimp is a snack piece

Since at least one element is missing to properly establish a rejection under 35 U.S.C. § 102(b) based upon Ruiz '099, Applicants respectfully request reconsideration and allowance of Claims 1-4 over the Examiner's rejection.

Claims 1-4, 6-10 and 19 stand rejected under 35 U.S.C. § 102(b) as being anticipated by a stack of three or more PRINGLES potato crisps as disclosed by Applicants' specification.

Quite simply, a stack of PRINGLES potato crisps, in and of themselves, do not provide a curved, concave container bottom for stacking said crisps. Without the curved container bottom to stack the crisps, which Applicants claim and show, a key element to establishing a proper rejection under 35 U.S.C. § 102(b) is missing. Applicants respectfully assert that the Examiner has not made a proper rejection based on anticipation and therefore request reconsideration and allowance of Claims 1-4, 6-10 and 19 over under 35 U.S.C. § 102(b) as being anticipated by a stack of three or more PRINGLES potato crisps as disclosed by Applicants' specification.

35 U.S.C. § 103 Rejection

Claims 6-9 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Johnson '588, Griffith '347 and Baur '798. The Examiner states that each reference discloses the invention individually except for the dimensions recited.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all the claim limitations. (MPEP § 2142).

Applicants respectfully disagree with the Examiner's contentions. First, Johnson '588 fails to teach or disclose a concave curved, shaped container bottom wherein the shaped container bottom is integrally affixed to the container itself. Rather, Johnson '588 merely provides an insert that is placed within a container. In addition, Applicants assert that Johnson '588 teaches away from Applicants' invention. In his disclosure Johnson 1) teaches that his insert should be flexible for bending of the insert material and 2) that the liner is a sheet of single faced corrugated paper.⁹

⁸ Sagan (U.S. Patent No. 6,042,856): Fig. 1.

⁹ Johnson '588: col. 2, lines 49-57; and col. 3, lines 13-15.

Nothing in Johnson '588 teaches or suggests transforming his insert into a container. Rather, the fact that his insert must be "flexible for bending" directly teaches away from the insert's ability to act as a separate package. Johnson '588 does not teach or suggest Applicants' "thermoplastic material" for use in his insert.¹⁰ Applicants assert that the choice of use of Johnson's paper versus Applicants' thermoplastic material is not a matter of design choice because Johnson's liner requires a flexibility for folding that Applicants' thermoplastic material does not provide; namely, the flexibility of paper. Given these omissions by Johnson '588, Applicants respectfully assert that the Examiner's rejection based on obviousness has not been met. Therefore, Applicants respectfully request reconsideration and allowance of Claims 6-9 and 18 over 35 U.S.C. § 103(a) in view of Johnson '588.

As noted above, Baur '798 does not teach or disclose a shaped container bottom whose bottom panel has a concave curvature about an axis. Baur '798 merely provides a tubular package for storing snack pieces. Without some suggestion or teaching of Applicants' shaped container bottom, it is improper to apply Baur '798 against Applicants' invention. Therefore, Applicants respectfully request reconsideration and allowance of Claims 6-9 and 18 over the 35 U.S.C. § 103(a) rejection.

Claims 8 and 9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sagan '865. The Examiner states that Sagan '865 discloses the invention except for the center radius dimensions. The Examiner further states that it would have been obvious by design choice to reduce the scale (make invention smaller) in order to accommodate smaller shrimp and reduced amount of dipping sauce required for smaller shrimp so that the size [of] the center radius is less than 60 mm and between 15 to 35 mm.

Sagan '865 presents shrimp, not snack chips. Further, Sagan '865 does not stack their shrimp. Rather, Sagan '865 presents shrimp in a circular array and not the stacked condition of Applicants' snack chips.¹¹ Applicants therefore respectfully disagree with the Examiner's contentions that Sagan '865 discloses the invention except for the same center radius dimensions.

Sagan '865 neither teaches or discloses the elements of Applicants' invention and without such teaching or disclosure, the Examiner's obviousness rejection cannot properly stand.

¹⁰ Applicants' Specification at page 8, lines 12-14.

Therefore, Applicants respectfully request reconsideration and allowance of Claims 8 and 9 over 35 U.S.C. § 103 in view of Sagan '865.

SUMMARY

All of the rejections in the Office Action have been discussed as have the distinctions between the cited references and the claimed invention.

In light of the discussions contained herein, Applicants respectfully request reconsideration of the rejections and their withdrawal, and all of the claims allowed.

Issuance of a Notice of Allowance at an early date is earnestly solicited.

Respectfully submitted,

MARY CARMEN GASCO, ET AL.,

By: 

Theodore P. Cummings, Esq.
Attorney for Applicant(s)
Registration No. 40,973
(513) 634-1906

March 20, 2003

Customer Number 27752

¹¹ Sagan (U.S. Patent No. 6,042,856): Fig. 1.